International Labour Conference
88th Session 2000

Report IV (1)

Maternity protection at work

Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)

International Labour Office Geneva

International Labour Conference
88th Session 2000

Report IV (1)

Maternity protection at work

Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommentation, 1952 (No. 95)

Fourth item on the agenda

International Labour Office Geneva

ISBN 92-2-111510-0
ISSN 0074-6681

First published 1999

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.
Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. A catalogue or list of new publications will be sent free of charge from the above address.

Printed in Switzerland ATA

CONTENTS

	Page
INTRODUCTION	1
PROPOSED TEXTS	2
Proposed Convention concerning the revision of the Maternity Protection Convention (Revised), 1952	9
Proposed Recommendation concerning the revision of the Maternity Protection Recommendation, 1952	13

INTRODUCTION

On 16 June 1999 the International Labour Conference, meeting in Geneva at its 87th Session, adopted the following resolution:

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fifth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for the Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95),

Decides that an item entitled "Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)" shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a Convention and a Recommendation.

By virtue of this resolution and in accordance with article 39, paragraph 6, of the Standing Orders of the Conference, the Office is required to prepare, on the basis of the first discussion by the Conference, the texts of a proposed Convention and Recommendation. These texts are to be sent to governments and are to reach them not later than two months from the closing of the 87th Session of the Conference. The purpose of this report is to transmit to governments the proposed texts.

Governments are asked to reply within three months, after consulting the most representative organizations of employers and workers, and to state whether they have any amendments to suggest or comments to make. Under the Standing Orders of the Conference, any amendments or comments on the proposed texts should be sent as soon as possible and in any case so as to reach the Office in Geneva not later than 30 November 1999.

Governments which have no amendments or comments to put forward are asked to inform the Office by the same date whether they consider that the proposed texts are a satisfactory basis for discussion by the Conference at its 88th Session in June 2000.

Governments are requested to indicate which organizations of employers and workers they consulted before they finalized their replies pursuant to article 39, paragraph 6, of the Standing Orders. Such consultation is also required by Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries which have ratified this Convention. The results of the consultation should be reflected in the governments' replies.

PROPOSED TEXTS

The texts of a proposed Convention and Recommendation concerning maternity protection are given below. These texts are based on the Conclusions adopted by the International Labour Conference following the first discussion at its 87th Session (hereinafter "the Conclusions").

In accordance with the practice established in 1988, the report of the Committee on Maternity Protection, appointed by the Conference to consider this item (hereinafter "the Committee"), is being sent to member States in its entirety, together with the record of the discussion in plenary session (see *Provisional Record* Nos. 20 and 26, attached).

A number of drafting changes have been incorporated in the proposed instruments in the interest of greater clarity, to bring the two official language versions of the texts into line with one another or to harmonize certain provisions.

In addition, in response to requests from the Committee to review the drafting of several points, the Office invites comments on various formulations designed to clarify the text. The Office also invites comments on several issues that the Committee had indicated would be particular subjects for the second discussion in June 2000.

Proposed Convention

Preamble

(Points 3 and 4 of the Conclusions)

The Office has established a standard preambular text which incorporates Points 3 and 4 of the Conclusions. The final line of the Preamble states that the Convention to be adopted may be cited as the Maternity Protection Convention, 2000. This is in line with the resolution adopted by the Conference to place on the agenda of the next ordinary session of the Conference an item entitled "Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)". An alternative, gender-neutral title referring to "rights concerning pregnancy, birth and early childhood" had been proposed in the course of the Committee's deliberations. As the proposed change in title was part of a larger proposal to develop international standards relating to parental leave, this question is further discussed below under Paragraphs 10 and 11 of the proposed Recommendation, which concern related types of leave.

Article 1

(Point 5 of the Conclusions)

The Office has added paragraphs (b) and (c) to Article 1, defining "maternity leave" and "additional leave", in order to eliminate repeated references to Articles 3 and 4, paragraph 3, which give substance to these terms.

In two places in paragraph (a), the words "without discrimination whatsoever" were recommended by the Committee to replace the words "whether married or unmarried" and "whether born of marriage or not", respectively, in the text that had been proposed by the Office. That text was intended to carry over the same principle of non-discrimination contained in the definition of "woman" and "child" found in the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103), specifically referring to civil status to emphasize that no distinction in any definition of "woman" or "child" should be made on this basis.

The term "discrimination" would have the same meaning as in the Discrimination (Occupation and Employment) Convention, 1958 (No. 111). In addition, with respect to the concept of "child", there was considerable discussion (see *Provisional Record* No. 20, paragraphs 62 to 67) as to whether adopted children should be covered. If the words "any child without discrimination whatsoever" were understood as including an adopted child, this could indicate that a legislative scheme encompassing a broader approach, to be found in the national legislation of many countries under which maternity protection rights are extended to adoptive mothers, would be fully in line with the Convention.

However, the clear inclusion of adopted children in the definition of "child" would not actually provide for any specific protection in the sense that none of the substantive provisions of the proposed Convention could be construed as extending protection to adoptive mothers or adopted children. They all address the situation of the employed woman who must be absent from work from a certain stage of her pregnancy through a period following childbirth, and cover the consequences to health and to her professional and financial situation including medical expenses. The term "child", as used in those provisions, could only be understood in that context as a child born to the employed woman during the maternity leave provided to her under Point 7 of the Conclusions. If the Convention is to extend its protection of employed women who must take leave from work on account of pregnancy and childbirth to those needing leave to care for an adopted child, consideration would have to be given to which of the provisions should be so extended, in what way and in what circumstances (covering, for example, the age of the child), and the resulting conclusions would need to be translated into specific amendments. In this connection, it is noted that the Committee rejected an amendment to add a new point to the proposed Recommendation, which would have extended to adoptive parents all rights provided for in the Convention with respect to the postnatal period of maternity (see *Provisional Record* No. 20, paragraphs 453 to 456).

Article 2

(Point 6 of the Conclusions)

The point of the Conclusions reflected in paragraph 2 of this Article, permitting exclusions of categories of workers or enterprises, contained the phrase "and notwithstanding Point 5" (now Article 1) in order to make it clear that the definition of

"woman" as "any female person without discrimination whatsoever" in Article 1 did not affect the capacity of Members to provide for exclusions of the kind envisaged under paragraph 2 of this Article. However, the Committee Drafting Committee signalled language-related difficulties. Article 1 only indicates how the term "woman" is to be understood. It does not state that all women are to be covered by the protection under the Convention. Thus, the first paragraph of Article 2 in effect excludes from the scope of the Convention two categories of workers: the self-employed and the unemployed. Paragraph 2 of Article 2 simply permits the exclusion of further categories of workers (or of enterprises). There is thus no risk (in the case of either this paragraph or of paragraph 1) of conflict with the definition of "woman" in Article 1. Hence, the phrase "notwithstanding Article 1" in paragraph 2 appears not only unnecessary but also confusing as it could give the impression that the prohibition in Article 1 of discrimination against women as such, on the ground of marital status for example, could be subject to exceptions.

During its discussions, the Committee sought clarification as to whether women who did not meet eligibility requirements or qualifying conditions would be considered a "limited category of worker" that could be excluded under paragraph 2 of Article 2. The Office responded that women who did not meet eligibility requirements for benefits could not be considered a category of worker in the sense of the provision. A later amendment to create a third paragraph allowing the exclusion of women who did not meet established eligibility criteria was rejected. It should be noted that the Maternity Protection Convention (Revised), 1952 (No. 103), permits Members to prescribe conditions to qualify for benefits, but does not subject the right to leave to any requirements regarding length of service. Since certain provisions of the Convention should presumably apply in any event (such as the prohibition against discrimination), any eligibility requirements should be placed in the provisions concerning the entitlements to which they relate rather than in the general section on scope.

Article 3

(Point 7 of the Conclusions)

In paragraph 1, the word "other" was inserted before the word "appropriate" to clarify that the provision would allow other forms of certification where medical certification was not possible.

Article 4

(Point 8 of the Conclusions)

An amendment to paragraph 1 referred to the health of mother "and/or" child (see *Provisional Record* No. 20, paragraph 140). In order to reflect the Committee's intention but without use of the term "and/or", to be avoided in legal texts, the Office proposes that reference be made to "the health of the mother and the health of the child". Thus, the protection of the health of each of them is to be taken into account when the period of compulsory leave is set.

The second paragraph of this Article provides for the extension of the prenatal portion of maternity leave by the period elapsing between the presumed date of

confinement and the actual date of confinement without any reduction in any compulsory portion of postnatal leave. It was placed as paragraph 3 in the Conclusions. Since, however, the extension is related to the compulsory portion of maternity leave, the Office has placed it as paragraph 2 so that it immediately follows the paragraph addressing that question.

What is now paragraph 3 gives substance to the term "additional leave", which had led to differences of understanding in the Committee's discussions. The Office had used the word "additional" to describe leave provided in the narrow circumstances in which a woman experiences illness, complications or the risk of complications arising out of pregnancy or confinement and which may supplement the 12 weeks of maternity leave provided under Article 3. The paragraph requires the woman to furnish a medical certificate stating that the illness, complications or risk of complications arise from pregnancy or confinement and thus it clearly differentiates this situation from that of a woman who experiences some other illness unrelated to pregnancy. Reports V (1) and V (2) showed that this contingency has been provided for by some Members as an extension of maternity leave and by other Members under national provisions regarding sickness, disability, or other necessary absences from the workplace. The Committee's adoption of the words "the maternity leave period" instead of the word "confinement" was intended to clarify the point that coverage for illness, complications or risk of complications arising out of pregnancy or confinement would be in addition to maternity leave. The paragraph simply states that "additional leave" is to be provided, allowing a Member flexibility as to how to provide for this leave under its own system.

The inclusion of the sentence: "The maximum duration of such leave may be fixed by the competent authority" makes it clear that the length of time during which a woman would be entitled to the additional leave and benefits in the event of the contingency of illness, complications or risk of complications is left to the Member to determine. This point should be considered in the light of Article 7 regarding employment protection.

Article 5

(Point 9 of the Conclusions)

Paragraph 1 reflects Point 9 of the Conclusions, but without the reference following "additional leave" in view of Article 1(c), referred to above.

Paragraph 5 reflects a provision in the Conclusions that resulted from an amendment reading: "A Member should ensure that the conditions to qualify for cash benefits are such that they do not result in excluding an unduly large percentage of the women to whom this Convention applies." The purpose of the paragraph was to ensure that qualifying conditions for cash benefits would not be so onerous as to exclude substantial numbers of women from receiving those benefits. While the intention of governments to try to include as many women as possible was affirmed, the definition of "unduly large percentage" was questioned in the course of discussion within the Committee. The use of the word "unduly" might indeed imply that the exclusion of a large percentage of women would be acceptable. On the assumption that the "large percentage" referred to in the Conclusions should be substantially more than 50 per cent, the Office proposes a rewording of this provision to read: "Each Member shall ensure that

the conditions to qualify for cash benefits can be satisfied by a large majority of women to whom this Convention applies." It seeks the comments of Members with regard to this proposal.

Article 7

(Point 11 of the Conclusions)

The Office has slightly reworded the first sentence to state more clearly that the woman is protected from dismissal during her pregnancy, absence during maternity leave, absence during any additional leave and during a period following her return to work. It is important to note that paragraph 3 of Article 4 enables the competent authority to determine the maximum duration of additional leave. Article 7 provides that the length of the period during which the woman's employment is protected following her return to work is to be prescribed by national laws and regulations.

In the course of their discussions, Committee members expressed conflicting views regarding employment protection during the nursing period. The provision resulting from the Conclusions makes it unlawful to dismiss a woman on the ground of nursing during a period following her return to work. There is no requirement that the period of protection include the whole of the nursing period. In determining the length of the period of employment protection, a Member may wish to consider the nursing period among the various factors taken into account (see further comments under Article 9 below).

Article 9

(Point 13 of the Conclusions)

Article 9 resulted from an amendment transferring two points regarding provisions for nursing breaks from the Proposed Conclusions with a view to a Recommendation to the Proposed Conclusions with a view to a Convention. Paragraph 1 creates a legal entitlement for a woman to take one or more daily breaks to nurse her child, which are to be counted as working time and remunerated accordingly. As the text is currently drafted, the number of breaks is not specified and the entitlement is unlimited in time, other than through the individual woman's choice to discontinue nursing her child. Paragraph 2 creates an obligation for Members to guarantee that the frequency and length of nursing breaks can be adapted to particular needs on the presentation of a medical certificate or other appropriate certification. The reference in that paragraph to national law or practice is made only in connection with the frequency and length of nursing breaks, not the duration of the nursing period. Members may wish to consider whether, in order to define the conditions under which nursing breaks might be taken, the reference to national law or practice might be placed within paragraph 1.

The Office invites comments and clarification from Members as to whether comparable rights and obligations exist in their national law and practice with regard to four points: a woman's entitlement to nursing breaks for an undefined period; the counting of nursing breaks as working time; the remuneration of nursing breaks; and the requirement that the frequency and length of nursing breaks be adapted to particular needs on the presentation of appropriate certification.

Article 10

(Point 14 of the Conclusions)

The relevant point of the Conclusions contained a reference to Point 7(1) (now Article 3, paragraph 1), with regard to maternity leave; this text has been removed in light of the definition of maternity leave provided in Article 1.

Final clauses

The Committee's discussions indicated (see *Provisional Record* No. 20, paragraphs 340 to 343) a possible need to review the final clauses of the new Convention. In accordance with Article 16 of Convention No. 103, that Convention would, unless the new Convention provides otherwise, be closed to further ratification as soon as the proposed revising Convention came into force. Similarly, any ratification of the new Convention would, once the latter was in force, involve the immediate denunciation of Convention No. 103. Hence, if the Conference wished to keep Convention No. 103 open for further ratification or even to allow a Member to ratify the new Convention while remaining bound by the old one (which might give rise to practical problems), an express provision would need to be included as part of the final clauses of the new Convention. It seems premature, however, to invite comments on this possibility, given that any solution adopted in this respect would presumably depend upon the extent of protection eventually agreed upon for the Convention.

Proposed Recommendation

Preamble

A standard preambular text has been provided.

Paragraph 1

(Point 16 of the Conclusions)

In the Committee discussions, a question was raised regarding the effect of the phrase "to the extent possible". The Office explained that the phrase was intended to take account of national law and practice as well as the exigencies of enterprises, such as their staffing, administrative and operational requirements. However, it is not clear (also due to a difference in word order in the English and French versions), whether the phrase modifies the measures to be taken or the woman's entitlement to choose. In order to make it clear that the intention is to qualify the word "measures," the phrase, "to the extent possible," has been moved to the beginning of the sentence. The Office invites comments with regard to this proposed shift.

Paragraph 7

(Point 22 of the Conclusions)

The sentence "The woman retains her right to return to her job or an equivalent job as soon as it is safe for her to do so", now in subparagraph 4, was placed at the end of subparagraph 2, clause (c), in the relevant point of the Conclusions. The Office proposes this change of position given that the sentence refers to the full range of health protection measures provided in the three subparagraphs of paragraph 7 rather than simply to the leave provision in subparagraph 2, clause (c).

Some minor drafting changes were introduced in subparagraph 3.

Paragraphs 10 and 11

(Points 25 and 26 of the Conclusions)

During the Committee's discussion of the inclusion of provisions in the proposed Recommendation with regard to related leave, the issue arose of extending the rights connected to maternity protection to adoptive parents. By a narrow margin, the Committee rejected an amendment extending all rights relating to the postnatal part of maternity leave, provided in the Convention, to an adoptive mother or father in respect of a child below a certain age, as determined by legislation (see the comments to Article 1 above). The extension of rights to adoptive parents would raise new considerations, given that some provisions would not be relevant to an adoptive mother, for example Article 4, paragraph 3, concerning additional leave. Several Governments suggested that the issue be revisited in the next discussion in view of its sensitivity and complexity. The Office invites Members to express their views regarding the possible inclusion in the Recommendation of a provision which would extend the substantial rights connected to maternity protection to adoptive parents, in particular those concerning leave, benefits, and employment protection.

In the course of the Committee's deliberations, a number of amendments were submitted which would reorient the proposed Convention away from a maternity protection approach towards a parental leave approach. A two-tiered Convention was suggested with core provisions related to maternity protection and an optional second part regarding parental leave and benefits during a period following the expiry of maternity leave (see *Provisional Record* No. 20, paragraphs 29 and 339 among others). It was also proposed that the new instruments might be referred to as international standards related to rights concerning pregnancy, birth and early childhood (see *Provisional Record* No. 20, paragraph 46). In view of the lack of support from Governments, these amendments were withdrawn. The Conference subsequently adopted a resolution to place on the agenda of the next ordinary session an item entitled "Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)". The Office notes the two different approaches: the first, based on maternity protection, focuses on the employment rights of an employed woman during pregnancy, maternity leave and following her return to work as well as on the health of the mother and child; the second, based on parental leave, lays greater stress on gender equality and shared responsibilities of parents with regard to childrearing. Most

Members have adopted a maternity protection approach in their national law and practice. However, the Office also observes that those Members which have adopted a parental leave scheme providing benefits typically reserve the early portion of that leave for the employed mother. The Office invites comments from Members with regard to any incompatibilities they might observe between a parental leave approach providing benefits and a maternity protection approach as currently proposed, which might result in obstacles to ratification. Once any such incompatibilities have been identified, the next question that might be considered is whether the protection afforded to employed women under parental leave systems is at least equal to that established under the new Convention. If this is found to be the case, consideration could be given to including a provision under which Members meeting certain conditions relating to a parental leave system would be deemed to be in compliance with the new instrument.

Proposed Convention concerning the revision of the Maternity Protection Convention (Revised), 1952

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-eighth Session on June 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to recognize the diversity in economic and social development of Members and the development of the protection of maternity in national law and practice, and

Recalling that many international labour Conventions and Recommendations include provisions concerning maternity protection, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000:

Definitions

Article 1

1. For the purposes of this Convention:

(a) the term "woman" applies to any female person without discrimination whatsoever and the term "child" applies to any child without discrimination whatsoever;

(b) the term "maternity leave" means the leave referred to in Article 3 of this Convention;

(c) the term "additional leave" means the leave referred to in Article 4, paragraph 3, of this Convention.

Scope

Article 2

1. This Convention applies to all employed women.

2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers or of enterprises when its application to them would raise special problems of a substantial nature.

3. Each Member which avails itself of the possibilities afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers or of enterprises thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

Leave

Article 3

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of her confinement, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 12 weeks.

2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification.

3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.

Article 4

1. Maternity leave shall include a period of compulsory leave, the duration and distribution of which shall be determined by each Member after consulting the representative organizations of employers and workers and with due regard to the protection of the health of the mother and the health of the child.

2. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, without reduction in any compulsory portion of postnatal leave.

3. On the basis of a medical certificate, additional leave shall be provided before or after the maternity leave period in case of illness, complications or risk of complications arising out of pregnancy or confinement. The maximum duration of such leave may be fixed by the competent authority.

BENEFITS

Article 5

1. Cash and medical benefits shall be provided, in accordance with national laws and regulations or other means referred to in Article 11 below, to women who are absent from work on maternity leave or additional leave.

2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Cash benefits shall be provided either:

(a) at a rate which shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits; or

(b) by means of a flat rate benefit of an appropriate amount.

4. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or other means referred to in Article 11 below, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

6. Medical benefits shall include prenatal, confinement and postnatal care, as well as hospitalization care when necessary.

Article 6

1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 5, paragraph 3, above if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations or other means referred to in Article 11 below.

2. A Member which avails itself of the possibilities afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

Article 7

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave or additional leave or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

Article 8

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except for work which under national laws or regulations is prohibited or restricted for pregnant or nursing women or which is prejudicial to the health of the woman and child.

NURSING MOTHERS

Article 9

1. A woman shall be entitled to one or more daily breaks to nurse her child, which shall be counted as working time and remunerated accordingly.

2. The frequency and length of the nursing breaks provided pursuant to national law or practice shall be adapted to particular needs on the presentation of a medical certificate or other appropriate certification as determined by national law and practice.

PERIODIC REVIEW

Article 10

Each Member shall examine periodically, in consultation with the most representative organizations of employers and workers, the appropriateness of extending the period of maternity leave or of increasing the amount or the rate of benefits referred to in Article 5, paragraph 3, above.

IMPLEMENTATION

Article 11

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration

awards or court decisions, or in any other manner as may be consistent with national practice.

Proposed Recommendation concerning the revision of the Maternity Protection Recommendation, 1952

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-eighth Session on June 2000, and

Having decided upon the adoption of certain proposals with regard to maternity protection, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Maternity Protection Convention, 2000 (hereinafter referred to as "the Convention"),

adopts this day of June of the year two thousand the following Recommendation, which may be cited as the Maternity Protection Recommendation, 2000:

Maternity leave

1. (1) Members should endeavour to extend the period of maternity leave to at least 16 weeks.

(2) Provision should be made for an extension of the maternity leave in the event of multiple births.

(3) To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave before or after childbirth.

Maternity benefits

2. Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during maternity leave and additional leave, as defined in Article 1 of the Convention, should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

3. To the extent possible, the medical benefits provided for in Article 5, paragraph 6, of the Convention should include:

(a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;

(b) care given by qualified midwives or other maternity services at home, in hospital or other medical establishments;

(c) maintenance in hospitals or other medical establishments;

(d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and

(e) dental and surgical care.

Financing of benefits

4. The cash and medical benefits should be provided through compulsory social insurance, public funds or in a manner determined by national law and practice.

5. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid both by the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

Employment protection and non-discrimination

6. A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her maternity leave, the period of which should be considered as a period of service for the determination of her rights.

Health protection

7. (1) The employment of a woman on work defined by the competent authority as prejudicial to her health or that of her child should be prohibited during pregnancy and up to three months after childbirth and longer if the woman is nursing her child.

(2) Where the woman's work is the subject of a prohibition of employment during pregnancy and nursing or where an assessment has established a recognized or significant risk to her health or that of the child, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:

(a) an adaptation of conditions of work;

(b) a transfer to another post, when such an adaptation is not feasible; or

(c) leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3) Measures referred to in subparagraph 2 above should in particular be taken in respect of:

(a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;

(b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;

(c) work requiring special equilibrium;

(d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.

(4) The woman should retain her right to return to her job or an equivalent job as soon as it is safe for her to do so.

NURSING MOTHERS

8. Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.

9. Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions.

RELATED TYPES OF LEAVE

10. (1) The employed woman or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.

(2) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.

11. In the case of the death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave. In the case of sickness or hospitalization of the mother after confinement and where the mother cannot look after the child, the employed father of the child should be entitled to leave in accordance with national law and practice.

Price: 7.50 Swiss francs
ISBN 92-2-111[illegible]-0

If this address is wrong, please return this sheet to the sender or, at least, the part bearing the address.

Pour tout changement d'adresse, prière de renvoyer à l'expéditeur cette feuille ou, du moins, la partie comportant l'adresse.

Sírvase utilizar el cambio de dirección del destinatario y enviar esta hoja al remitente, o al menos la parte en que está escrita la dirección.

INTERNATIONAL LABOUR OFFICE
BUREAU INTERNATIONAL DU TRAVAIL
OFICINA INTERNACIONAL DEL TRABAJO
CH-1211 GENÈVE 22

RETOUR / RETURN / DEVOLUCION

- ☐ Refusé / Refused / Rehusado
- ☐ Non réclamé / Unclaimed / No reclamado
- ☐ Parti / Gone away / Ausente
- ☐ Inconnu / Unknown / Desconocido
- ☐ Décédé / Deceased / Fallecido
- ☐ Adresse inexacte / Incorrect address / Dirección inexacta

P.P.
1211 GENÈVE 22